

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIUS M. ENGEL,
Plaintiff,

v.

PARAGON SYSTEMS, INC., et al.,
Defendants.

No. 2:24-cv-02479-DJC-CKD PS

ORDER

Plaintiff proceeds in this action in pro per. This matter is before the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21).

On April 21, 2025, the Magistrate Judge filed Findings and Recommendations (ECF No. 45), which were served on the parties and which contained notice that any objections to the Findings and Recommendations were to be filed within fourteen days. On May 2, 2025, Plaintiff filed Objections to the Findings and Recommendations. (ECF No. 49.) On May 05, 2025, Defendants Federal Protective Service ("FPS"); Department of Homeland Security ("DHS"); and Social Security Administration ("SSA"); Richard Castrellon; Robert Marquez; and Sheila Sharma's ("Federal Defendants") filed a Response to Plaintiff's Objections (ECF No. 50), and on May 12, 2025, Defendants Paragon Systems, Inc.; Debra Harris; and Steven O'Connor

1 ("Paragon Defendants") filed a Response to the Objections (ECF No. 52). On May 12,
2 2025, Plaintiff filed a reply to Federal Defendants' Response (ECF No. 54).

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
4 304, the Court has conducted a review of this case. Having carefully reviewed this
5 matter, the Court finds the Findings and Recommendations to be supported by the
6 record and by proper analysis.

7 The Court notes that on two instances in the Findings and Recommendations,
8 the Magistrate Judge referenced information outside of the Complaint. Generally, on
9 a motion to dismiss, the Court must accept as true the allegations in the Plaintiff's
10 Complaint. See Fed. R. Civ. P. 12(d); see also *Whisnant v. United States*, 400 F.3d
11 1177, 1179 (9th Cir. 2005). However, in both instances in the Findings and
12 Recommendations where information outside the Complaint is referenced, the
13 Magistrate Judge's ruling is correct even if this information was not considered.

14 During the discussion of the application of the Federal Tort Claims Act ("FTCA")
15 to Plaintiff's tort claims, the Magistrate Judge referenced statements from FPS and
16 DHS that no record exists of Plaintiff filing an administrative claim. (ECF No. 45 at 9.)
17 However, this information is ultimately irrelevant to the Magistrate Judge's
18 determination that Plaintiff had failed to adequately allege compliance with the FTCA.
19 As the Magistrate Judge correctly noted, Plaintiff's Complaint does not plead
20 compliance with the FTCA or allege any facts establishing compliance.¹ As such,
21 dismissal of these claims is appropriate. *Gartner v. S.E.C.*, 913 F. Supp. 1372, 1381
22 (C.D. Cal. 1995) ("Exhaustion of administrative remedies should be alleged in the
23 complaint or the court may dismiss the complaint for lack of jurisdiction.") The
24 information from Defendants is relevant, however, to the determination as to whether

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26 ¹ In his objections, Plaintiff argues that he complied with the FTCA based on his filing with the EEOC.
27 (ECF No. 49 at 3.) As noted by the Magistrate Judge in the Findings and Recommendations, an EEOC
28 complaint does not satisfy the administrative exhaustion requirements of the FTCA which require a
claim be presented to "the appropriate Federal Agency . . ." 28 U.S.C. § 2675(a); see also *Fairley v.*
Potter, No. 01-cv-1363-VRW, 2003 WL 403361, at *5-6 (N.D. Cal. Feb. 13, 2003).

1 to grant leave to amend. See *Halousek v. Cal. Pub. Emps.' Ret. Sys.*, No. 2:23-cv-
2 00839-KJM-CSK, 2024 WL 3252947, at *3 (E.D. Cal. July 1, 2024) (citing *Broam v.*
3 *Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003)). On that basis, the Magistrate Judge
4 appropriately determined that amendment would be futile. (ECF No. 45 at 9.)

5 Later in the Findings and Recommendations, the Magistrate Judge also
6 referenced information introduced by Defendants to show that Plaintiff was not an
7 employee of FPS or DHS. (ECF No. 45 at 12.) Again, while consideration of this
8 information for purposes of dismissal is inappropriate, the Magistrate Judge also
9 noted that attached to and incorporated into Plaintiff's Complaint is the employment
10 agreement that expressly states that employees are "employed by the Company[,]"
11 "under the control" of the Company, and working under with FPS and DHS under a
12 contract between the Company and DHS/FPS. (ECF No. 1-1 at 29.) Also attached to
13 and referenced in the Complaint is Plaintiff's personal identification verification card
14 from his employment, which marks Plaintiff as a "contractor" with DHS and FPS. (*Id.* at
15 3, 33.) This information, fully contained within the Complaint, is sufficient to establish
16 that Plaintiff's allegation that he was an employee of FPS and DHS is not plausible.
17 Thus, the Findings and Recommendations appropriately found that the Complaint
18 fails to state a claim under 29 U.S.C. § 623. The Magistrate Judge also appropriately
19 determined that amendment on this point would be futile based in part on the
20 additional information provided by Defendants. See *Halousek*, 2024 WL 3252947, at
21 *3.

22 Finally, on April 28, 2025, Plaintiff filed a Notice of Dismissal (ECF No. 46) and a
23 Motion to Remand (ECF No. 47). The Federal Defendants opposed the Notice of
24 Dismissal (ECF No. 48), and the Paragon Defendants opposed the Motion to Remand
25 (ECF No. 53). On May 20, 2025, Plaintiff withdrew his Notice of Dismissal and Motion
26 to Remand. (ECF No. 55.) The Court denies as moot Plaintiff's Notice of Dismissal and
27 Motion to Remand as untimely and because the Federal Defendants are, by this order,
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1 dismissed without leave to amend.²


2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The Findings and Recommendations (ECF No. 45) are ADOPTED IN FULL;
- 4 2. Defendants Federal Protective Service ("FPS"); Department of Homeland
- 5 Security ("DHS"); and Social Security Administration ("SSA"); Richard Castrellon;
- 6 Robert Marquez; and Sheila Sharma's Motion to Dismiss (ECF No. 21) is
- 7 GRANTED without leave to amend;
- 8 3. The Paragon Defendants' Motion to Dismiss (ECF No. 5) is GRANTED;
- 9 a. The following claims are dismissed with leave to amend:
- 10 i. Age discrimination under 29 U.S.C. § 623;
- 11 ii. Breach of contract
- 12 iii. Tortious interference with contract;
- 13 iv. Constructive wrongful discharge;
- 14 b. The following claims are dismissed without leave to amend:
- 15 i. Conspiracy
- 16 ii. Whistleblower retaliation;
- 17 iii. HIPAA and CARES Act;
- 18 iv. Violation of the First Amendment;
- 19 v. Violation of the Fifth and Fourteenth Amendment;
- 20 vi. Ratification;
- 21 vii. Discrimination under 42 U.S.C. § 2000d;
- 22 viii. Interference with economic advantage;
- 23 ix. Fraud;
- 24 x. Elder abuse;
- 25 xi. Assault and battery; and
- 26 4. The non-served defendants John Hodek, Darin Biggers, Fidel Realyvasquez, Jr.,
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28 ² Further, dismissal at this stage of the case requires a court order. See Fed. R. Civ. P. 41(a).

- 1 and Sacramento Occupational Medical Group are dismissed;
- 2 5. Plaintiff's motion for Summary Judgment (ECF No. 9) is DENIED AS MOOT;
- 3 6. Plaintiff's motion for Default Judgment (ECF No. 9) is DENIED AS MOOT;
- 4 7. Plaintiff's Notice of Dismissal (ECF No. 46) is DENIED AS MOOT; and
- 5 8. Plaintiff's Motion to Remand is (ECF No. 47) DENIED AS MOOT.

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8 Dated: September 26, 2025


THE HONORABLE DANIEL J. CALABRETTA
UNITED STATES DISTRICT JUDGE